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Committee against Torture

Communication No. 550/2013

Decision adopted by the Committee at its fifty-fourth session, 20 April–15 May 2015

Submitted by:	S.K. and others (represented by counsel, Johan Lagerfelt)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	23 May 2013 (initial submission)
Date of present decision:	8 May 2015
Subject matter:	Deportation to the Russian Federation
Procedural issue:	Non-substantiation of the claim
Substantive issue:	Risk of torture upon return to the country of origin
Article of the Convention:	Article 3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 550/2013*

Submitted by:	S.K. and others (represented by counsel, Johan Lagerfelt)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	23 May 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of complaint No. 550/2013, submitted to it on behalf of S.K., his wife Z.K. and their daughter M.K., under article 22 of the Convention,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainants are S.K. (the first complainant), his wife Z.K. (the second complainant) and their daughter M.K. (the third complainant), all Russian nationals, born in 1946, 1957 and 1993, respectively. Their request for asylum in Sweden was rejected and, at the time of submission of the complaint, they were awaiting deportation to the Russian Federation. They claim that by deporting them, Sweden would violate their rights under article 3 of the Convention. The complainants are represented by counsel, Johan Lagerfelt.

1.2 On 24 May 2013, the Committee, acting through its Rapporteur on new complaints and interim measures under rule 114, paragraph 1, of its rules of procedure, requested the State party to refrain from expelling the complainants to the Russian Federation while their complaint was under consideration by the Committee.

The facts as presented by the complainants

2.1 The complainants used to live in Chechnya, in the Russian Federation. The first and second complainants have three children, two sons and a daughter. Both sons had been

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

involved in the resistance movement in Chechnya. As a result of their activities, the sons had to flee to Sweden, and were granted asylum there in 2006 and 2007, respectively.

2.2 In 2008, the first complainant visited his sons in Sweden for the first time. He then returned to Chechnya. In late 2008, the complainants started to be harassed by armed and masked men they considered to be members of the Chechen authorities. The men stated that they wanted to "lay their hands" on the sons who had escaped to Sweden. The situation escalated over time, as intrusions were repeated and became more aggressive.

2.3 In November 2010, armed and masked men entered the family apartment, tore up their passports for travelling abroad so as to prevent them from leaving the Russian Federation, and threatened to abduct the third complainant. The men beat the first complainant as he attempted to protect his daughter, and threatened to shoot him. They fired warning shots inside the apartment. The daughter was then sent to Grozny to stay temporarily with her uncle as a measure of protection, and the first and second complainants managed to obtain new passports through bribes.

2.4 On 26 December 2010, the complainants entered Sweden and on 29 December they applied for asylum. On 13 October 2011, the Swedish Migration Board rejected their application on grounds that there was no "general situation of strife" in the Russian Federation and no evidence that the armed, masked men were linked to the Chechen authorities. The Board considered that the men who attacked the complainants were ordinary criminals, and that the family should turn to the Russian authorities for protection. It also suggested that the family should have taken refuge somewhere else in the Russian Federation, and raised the fact that the family did not immediately leave, but stayed for one additional month in Chechnya.

2.5 On an unspecified date, the negative decision of the Migration Board was appealed to the Migration Court. On 25 September 2012, the Court rejected the complainants' appeal, noting that the Russian Federation has the capacity to, and would, offer protection to its citizens. It observed that the names in the arrest warrants submitted as evidence by the complainants were not the same as the names in the family's passports, as they were spelled differently. On 29 November 2012, the Migration Court of Appeal denied the complainants leave to appeal. The decision of the Migration Board of 13 October 2011 to reject the complainants' asylum application therefore became final.

2.6 On 18 January 2013, the complainants applied again to the Migration Court, requesting to "inhibit" the enforcement of the decision rejecting their asylum application. They submitted new written evidence supporting the fact that the parents had been summoned to be interrogated by the district prosecutor in Grozny for having helped their sons to escape to Sweden, and that an arrest warrant had been issued by the prosecutor against them. On 4 March 2013, the Migration Board denied their request on the basis that nothing new had been presented by the complainants. On 23 April 2013, the Migration Court stated once again that the family should apply for protection to the Russian authorities.

The complaint

3. The complainants claim that should they be deported to the Russian Federation there are substantial grounds to believe that the harassment and persecution they previously experienced in Chechnya will escalate further. In particular, they stress that the father has been directly threatened with extrajudicial execution, and that the daughter has been threatened with abduction. The complainants also point out that the general human rights situation in Chechnya is such that the use of torture and other cruel and inhuman treatment is widespread. Their forcible deportation to the Russian Federation would constitute a violation, by the State party, of article 3 of the Convention.

State party's observations on admissibility and merits

4.1 By note verbale of 25 November 2013, the State party submitted its observations on the admissibility and merits. It recalls the facts of the case and notes that the complainants arrived in Sweden on 26 December 2010 and applied for asylum on 29 December 2010. On 13 October 2011, the Swedish Migration Board rejected their applications and decided to have them expelled to the Russian Federation. On 25 September 2012, the Migration Court rejected their appeal. On 29 November 2012, the Migration Court of Appeal refused to grant leave to appeal and the decision to expel the complainants became final on 17 December 2012. On 18 January 2013, the complainants claimed before the Migration Board that there were impediments to enforcement, and requested a re-examination of their case. The Migration Board rejected their request on 4 March 2013. The decision was appealed to the Migration Court, which, on 23 April 2013, rejected the appeal.

4.2 The complainants essentially claimed before the Swedish authorities that they had been subjected to threats by the Chechen authorities owing to activities of the first complainant as well as activities of the two sons, who had allegedly been supporting rebels in Chechnya before they fled to Sweden, where they had been granted asylum in 2002 and 2006, respectively. The complainants claim that they were repeatedly visited in their home by masked men who threatened them and demanded that they convince the sons to return to Chechnya. The threats reportedly escalated over time and during one visit, in November 2010, the masked men tore up the complainants' passports and threatened to abduct their daughter. The first complainant was reportedly assaulted on that occasion and gunshots were fired in the apartment. After that incident, the third complainant left to live with her uncle in Grozny.

4.3 The State party notes that, in accordance with article 22 (5) (a) of the Convention, the Committee should not consider any communications from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and also notes that it is not aware whether the present case was or is the subject of any other such investigation or settlement. Furthermore, the State party acknowledges that all available domestic remedies have been exhausted in the present case as required by article 22 (5) (b) of the Convention.

4.4 The State party maintains that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to the Russian Federation fails to rise to the minimum level of substantiation required for purposes of admissibility. According to the State party, the present communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.[1] Should the Committee declare it admissible, the issue before the Committee would be whether the forced return of the complainants to the Russian Federation would violate the obligation of Sweden under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

4.5 The State party notes that when determining whether the forced return of a person to another country would constitute a violation of article 3, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. However, as the Committee has repeatedly emphasized, the aim of such a determination is to establish whether the

[1] The State party refers to communication No. 216/2002, *H.I.A. v. Sweden*, Views adopted on 2 May 2003, para. 6.2.

individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. Therefore, it follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. For a violation of article 3 to be established, additional grounds must exist showing that the individual concerned would be personally at risk.[2]

4.6 In the light of the above, the State party notes that when determining whether the forced return of the complainants to the Russian Federation would constitute a breach of article 3 of the Convention, the following considerations are relevant: the general human rights situation in the Russian Federation and, in particular, the personal risk of the complainant being subjected to torture, following his return there.

4.7 Furthermore, the State party recalls the Committee's jurisprudence, according to which the burden of proof in cases like the present one rests with the complainant, who must present an arguable case establishing that he runs a foreseeable, real and personal risk of being subjected to torture.[3] In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be personal and present.[4]

4.8 Regarding the general human rights situation in the Russian Federation, the State party notes that, given that the Russian Federation is party to the Convention and to the International Covenant on Civil and Political Rights, it assumes that the Committee is well aware of the general human rights situation in that country, including the situation in the northern Caucasus. In this regard, the State party therefore finds it sufficient to refer to the information regarding the human rights situation in the Russian Federation that can be found in recent reports, such as the Russia 2012 Human Rights Report published by the United States of America Department of State;[5] Amnesty International's annual report for 2012; Human Rights Watch's World Report 2012: Russia;[6] the Swedish Migration Board's country profile of the Russian Federation dated 25 February 2011; the 2011 report of the Swedish Ministry for Foreign Affairs on human rights in the Russian Federation;[7] reports published by the Norwegian Country of Origin Information Centre, including "Temanotat: Tsjetsjenia Sikkerhetssituasjonen", "Temanotat Nord-Kaukasus: Etterlysninger" and "Temanotat Tsjetsjenia: Tsjetsjenske myndigheters reaksjoner mot opprørere og personer som bistpr opprørere"; and a report published by the Danish Refugee Council.[8]

4.9 The State party submits that while the existing reports show that the general level of violence and serious human rights violations in Chechnya have decreased in recent years, there is still information about violations such as disappearances, abuse and killings. The

[2] The State party refers to communications No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3, and No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

[3] See, for example, communications No. 178/2001, *H.O. v. Sweden*, Views adopted on 13 November 2001, para. 13, and No. 203/2002, *A. T. v. the Netherlands*, Views adopted on 14 November 2003, para. 7.3.

[4] See for example, the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, paras. 5–7.

[5] Available at www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper.

[6] Available at www.hrw.org/world-report-2012/world-report-2012-russia.

[7] Available at www.manskligarattigheter.se/sv/manskliga-rattigheter-i-varlden/ud-s-rapporter-om-manskliga-rattigheter/europa-och-centralasien?c=Ryssland.

[8] Available at http://flygtning.dk/viden-fakta/publikationer/landeprofiler/?elD=dam_frontend_push&docID=7077.

State party does not underestimate the concerns that may legitimately be expressed with regard to the current human rights situation in the Russian Federation and especially in the region of northern Caucasus. The current situation in Chechnya, however, does not in itself suffice to establish that the general situation in the region is such that the deportation of the complainants would entail a violation of article 3 of the Convention.[9] Therefore, the State party contends that the removal of the complainants to the Russian Federation would only entail a breach of the Convention if they could show that they would be personally at risk of being subjected to treatment contrary to article 3. However, in the present case, the complainants have failed to substantiate their claims that they would run such a risk.

4.10 The State party observes that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. Thus, the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the one applied by the Committee when examining subsequent complaints under the Convention. The fact that such a test has been applied in the present case is indicated by the reference made by the Swedish authorities in their decisions relating to the present case to chapter 4, sections 1, 2 and 2 (a) of the Aliens Act. Furthermore, pursuant to chapter 12, sections 1–3, of the Act, there may never be enforcement of the expulsion of an alien to a country where there are reasonable grounds to assume that he or she would be in danger of being subjected, inter alia, to torture or other inhuman or degrading treatment or punishment or to a country where he or she is not protected from being sent on to a country in which he or she would be at such risk.

4.11 The State party adds that its national authorities are in a good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her claims. In the present case, the Migration Board and the Migration Court made thorough examination of the complainants' case. The Board conducted individual interviews with all three complainants when they applied for asylum. The interviews lasted approximately two hours (first complainant), one and a half hours (second complainant) and two hours (third complainant). The purpose of the interviews was to give the complainants an opportunity to explain the reasons for their need for protection and clarify all the facts relevant to the Board's assessment. The extensive interviews with the complainants were conducted in the presence of their legal counsel and an interpreter, whom the complainants confirmed that they understood well. Further, the complainants have argued their case in writing before the Board and the migration courts. Throughout the procedure regarding the complainants' asylum request they were represented by a legal counsel. After the decision ordering the expulsion of the complainants gained legal force, the Board reviewed new circumstances invoked by the complainants. The decisions of the Board were appealed against, but were not overturned by the Migration Court. Against this background, the State party holds that it must be considered that the Migration Board and the migration courts had sufficient information, together with the facts and documentations in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainants' needs for protection in Sweden.

4.12 In this connection, the State party recalls the Committee's general comment No. 1 (1997) on article 3 of the Convention in the context of article 22,[10] as well as its jurisprudence, in which it has stated that the Committee was not an appellate, quasi-judicial or administrative body,[11] and that considerable weight would be given to findings of facts

[9] See, for example, the recent judgment of the European Court of Human Rights, *I. v. Sweden*, application No. 61204/09, 5 September 2013, para. 58.

[10] Para. 9.

[11] See, for example, communication No. 277/2005, *N.Z.S. v. Sweden*, Views adopted on 22 November 2006, para. 8.6.

that were made by organs of the State party concerned. Moreover, the Committee has held that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.[12]

4.13 The State party contends, in the light of the above, and given that the Migration Board and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was arbitrary in any way or amounted to a denial of justice in the present case. The State party submits that great weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainants to the Russian Federation.

4.14 In addition, the State party observes that the complainants have submitted before the Committee that expelling them to the Russian Federation would be in violation of article 3 of the Convention as upon return there they risk being subjected to torture as stipulated in article 1 in the Convention owing to the activities carried out by the complainants' sons/brothers prior to leaving for Sweden. The complainants have submitted that their sons/brothers were suspected of having participated in rebel activities in the Chechnya region because they had assisted the rebels with food and medicine.

4.15 In this connection, the State party, like its migration authorities, finds a number of aspects that give reason to question the veracity of the complainants' claims. To begin with, the State party finds it pertinent to point to the fact that the complainants' sons/brothers were granted asylum in Sweden on the grounds that at the time of their application there was an internal armed conflict in Chechnya, and not on grounds of an individual need for protection. As the complainants have not even alleged that their sons/brothers were active in the rebel movement, other than by occasionally providing food and medicine for rebels before they left Chechnya, there are reasons to question the alleged interest by the Chechen authorities in the remaining family and its continued harassment of them so many years later.

4.16 The State party notes that according to available country-of-origin information, the nature of the conflict in Chechnya has changed in recent years, from being a conflict driven by separatism, during 1999–2003 and 2005, towards a conflict based rather on radical Islamism. As a consequence of this change the Chechen authorities are not as interested in earlier rebels, especially not in those who have not been active during the past few years.[13] According to the aforementioned country information, the Chechen authorities may exert pressure upon family members of suspected rebels; however, the purpose of that pressure is to force the suspect to cease his or her rebel activity. In this regard, the State party therefore shares the migration authorities' view that it is not plausible that the Chechen authorities would exert pressure on the complainants years later in order to force them to convince their sons/brothers to return to the Russian Federation.

4.17 Furthermore, the State party finds it important to refer to available country-of-origin information according to which a substantial part of the population in Chechnya has supported rebels at some point and the fact that the authorities are currently not interested in people who have done so only sporadically. Moreover, the Chechen authorities focus on people who are suspected of having supported or collaborated with high-profile rebels and

[12] See, for example, communication No. 219/2002, *G.K. v. Switzerland*, Views adopted on 7 May 2003, para. 6.12.

[13] See the Swedish Migration Board's country profile of the Russian Federation dated 25 February 2011, pp. 23–24.

have given substantial support for a longer period of time.[14] In this regard, the State party notes that the complainants' sons/brothers left the Russian Federation in 2002 and 2006, respectively. The complainants have not alleged that the sons/brothers, since their departure, have been in contact with the rebels or that they have supported them in any way. It has also not been shown that the sons/brothers gave the rebels any more substantial support other than sporadically bringing them food and medicine, or that they supported any high-profile rebels.

4.18 Furthermore, the State party shares the migration authorities' view that the complainants' descriptions of the masked men who visited their apartment and threatened them are vague and of a general nature. It is only an assumption on the complainants' part that the masked men had a connection to the authorities and no evidence had been brought forward to support this view. As the Swedish migration authorities noted in their decisions and judgments, the complainants remained in their home despite the alleged threats, which indicates that they did not find their need of protection to be particularly urgent. The third complainant did move to her uncle's home after the last visit by the masked men, but the State party notes that the complainants did not consider the threat against her in the spring of 2010 to be so serious that she could not complete her studies at the municipal upper secondary school, which is supported by the submitted certificate of completed studies and by the complainants' own account. Moreover, the conduct of the third complainant and her family indicates that they considered that moving the third complainant to another town would be sufficient to eliminate the threats against her.

4.19 In addition, the State party notes that according to the available country-of-origin information it is common for individuals who are related to suspected rebels to be dismissed from their place of work. The first complainant has stated that he worked as a geophysicist for a company run by the Chechen authorities. According to his own account, he kept his employment until his departure from the country; he has also stated that he did not encounter any problems at work. The State party shares the view of the Swedish migration authorities that these circumstances indicate that the complainants were not of any great interest to the Chechen authorities.

4.20 Moreover, the complainants submitted their internal passports in order to support their identities. According to the stamps in the passports and the complainants' own account, the passports were issued in 2009 and 2010 by the competent authorities in Grozny. The complainants were thus able to obtain these passports from the Chechen authorities in 2009 and 2010, despite the fact that the alleged threats towards them began in 2008. In this regard, the State party shares the Swedish migration authorities' view that this circumstance speaks strongly against the complainants' claims that they felt an urgent threat from the Chechen authorities and that they were threatened by the authorities.

4.21 Further, the complainants have alleged that they have been summoned for questioning in the Russian Federation and have submitted documents in support of this claim. As the Swedish migration authorities have noted, the summonses are of a simple nature and the declared name of the second complainant's father is different from the name specified in her internal passport. The complainants have not explained who sent those documents to Sweden or how that person came into possession of them. The State party therefore shares the assessment of the Swedish migration authorities that those documents cannot be accorded any significant evidentiary value.

4.22 Furthermore, after the decision to expel the complainants became final and non-appealable the complainants claimed that there were impediments to the enforcement of the

[14] Ibid.

decision to expel them given that, since they had not complied with the summons, they were wanted by the authorities. In support of this claim they submitted arrest warrants from the prosecution office in Grozny. The complainants allege that the arrest warrants, which have been sent to the police and the security services, state that the complainants must be apprehended.[15] The complainants have not explained how they managed to obtain those documents. In addition, the State party notes that arrest warrants are internal documents circulated only among authorities and to which an individual should normally have no access. Consequently, the State party is of the view that the complainants have not made their alleged need of protection probable by the submission of those documents.

4.23 Moreover, the acts of violence and assaults that the complainants allege that they have been subjected to are to be considered as criminal acts by private individuals. In this light, the State party also shares the migration authorities' conclusion that it is primarily the duty of the Chechen authorities to protect their people from criminal acts committed by private individuals. According to available country-of-origin information, the Russian Federation does provide protection against such criminal acts as the complainants claim to have been subjected to.[16] No evidence has been brought forward in the present case to suggest that the Chechen authorities would lack the will or the capacity to protect the family from such criminal acts. Therefore, should the complainants be subjected to such acts upon return to Chechnya they should contact the authorities for protection.

4.24 In the light of the above, the State party maintains that the circumstances invoked by the complainants are not sufficient to show that the alleged risk of torture or cruel, inhuman or degrading treatment or punishment fulfils the requirements of being foreseeable, real and personal. Accordingly, the enforcement of the expulsion order would, under the present circumstances, not constitute a violation of article 3 of the Convention. Since the complainants' claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as manifestly unfounded.

4.25 In view of the prevailing situation in Chechnya as described in the aforementioned country reports, the State party notes that it is also possible and reasonable for the complainants to consider resettling in another part of the Russian Federation if they feel at risk of being exposed to criminal acts. It appears from relevant Russian law that a person is not obliged to return to his or her hometown to cancel his or her previous registration before settling in a new place, and the complainants would thus be able to settle in a new place of residence immediately upon return to the Russian Federation and register there.[17]

4.26 In sum, the State party maintains that the present communication should be declared inadmissible as manifestly unfounded under article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure or, in the alternative, that the present communication reveals no violation of the Convention.

Complainants' comments on the State party's observations on the admissibility and merits

5.1 In reply to the State party's observations, on 6 February 2014, the complainants firstly submit that the State party's arguments are not only contrary to the existing reports concerning the situation in the Russian Federation, but also to the report on the human rights situation in the Russian Federation prepared by the State party's own office for foreign affairs. In that report, which is available only in Swedish, the situation is described

[15] Regarding arrest warrants, among other things, see also Norwegian Country of Origin Information Centre, "Temanotat Nord-Kaukasus: Etterlysninger" (25 May 2013).

[16] See, for example, the Swedish Migration Board's country profile of the Russian Federation, p. 70.

[17] Ibid.

in a more serious manner. According to the report, the Russian administration is characterized by widespread corruption and inefficiency, human rights activists, journalists and whistle-blowers are harassed and subjected to violence, sometimes with fatal consequences, and, as a rule, the perpetrators of such harassment and violence are not prosecuted. Further, the authors of the report note that the most serious violations against human rights still occur in the northern Caucasus. In the name of the fight against terrorism, abuses are inflicted on the civilian population in the form of torture, arbitrary arrests and kidnappings. There are also unconfirmed reports about political murders and disappearances authorized by the authorities, especially in the northern Caucasus. It is also noted in the report that in 2011, as in previous years, a series of attacks, threats and acts of harassment against, inter alia, human rights activists, journalists, lawyers and so-called whistle-blowers has taken place. At the same time, assaults by the security forces on the civilian population continued, primarily in the form of arbitrary arrests, kidnappings and torture — as a rule without judicial consequences. Few victims dare to complain, owing to their fear of reprisals. It is therefore difficult to obtain reliable statistics on human rights violations in Chechnya. The non-governmental organization Memorial and the so-called "mobile group" registered 14 disappearances in 2011 and described them as "the tip of an iceberg".

5.2 The complainants note that the report they refer to is only 24 pages long, yet it contains information describing the Russian Federation as a country in which abuses against arrested persons and detainees and harassment of those who complain about such abuses, for example, lawyers, activists, journalists, whistle-blowers and others who oppose the regime, are routine, and indicating that those liable are not brought to justice and held accountable. Consequently, the complainants are surprised that the State party's authorities in their evaluation of the complainants' story chose not to refer to that report, in particular since it was published by the State party's own office for foreign affairs.

5.3 The complainants maintain that that report clearly demonstrates a consistent pattern of gross, flagrant or mass violations of human rights. In addition, as noted in the initial submission, the complainants had been subjected to increasing harassment and humiliation, concluding in the final visit by masked assailants, during which a gun was fired in their home.

5.4 Further, the complainants agree that, in principle, the State party is correct in stating that the Migration Board and the Migration Court are in a good position to assess the information submitted by an applicant. However, the reality is different. In this regard, the complainants note that the Migration Court has stated that it does not have specific knowledge of countries and that it trusts the Migration Board's conclusions. Thus, it is clear that the Migration Court is, by its own admission, incapable of making a well-informed decision, that it relies completely on one party to the dispute and that applicants' chances of obtaining an impartial assessment are therefore non-existent. Thus it is not unreasonable to suspect that the evaluation of the facts and evidence by the migration courts has been substandard in the present case, to an extent that it amounted to a denial of justice. The fact that a court has particular expertise in the field of asylum law in itself is not sufficient to ensure that justice has been done in an equitable manner; impartiality and specific knowledge of the countries involved are prerequisites which are clearly missing in the present case.

5.5 The complainants take note of the State party's argument concerning the allegedly changing nature of the conflict in Chechnya. In this connection, they maintain that this argument is spurious and, in any event, irrelevant. In this connection, the complainants make reference to a former Commissioner for Human Rights of the Council of Europe who described the situation in Chechnya as an atmosphere of terror. In addition, the Parliamentary Assembly of the Council of Europe has described the situation in Chechnya

as "a climate of pervading fear", and noted disappearances of government opponents and human rights defenders, reprisals against the families of suspected fighters and intimidation of the media and civil society, all in an atmosphere of "personalization of power".[18]

5.6 Furthermore, as to their statement concerning the actions of the masked uniformed men, the complainants submit that practically every Chechen seeking asylum can corroborate such stories. The fact that it is impossible to ascertain the identity of these assailants in no way diminishes the credibility of the complainants' story. The complainants did not pursue the issue of their harassment with the relevant authorities in the Russian Federation because they feared that such a course of action would be meaningless, since it is "the authorities that are perceived to be the major threat to life and limb". The general lack of accountability and the ability of the authorities to act with total impunity are two facets of life in the Russian Federation that have been commented on many time by many individuals and organizations.

5.7 As concerns the copies of the summonses provided, the complainants note that "it [was] established long ago that this is how the summonses look". It is unclear why the State party continues to challenge the authenticity of the summonses on the basis that the spelling of the name of the father of one of the complainants is different in two documents. The complainants note that "in Russian, all nouns, including names, are conjugated in six different cases. For example, a masculine noun/name ending in a consonant receives the suffix –a in the accusative, while a female noun/name with an ending in –a, changes the ending to the Russian –y, pronounced –oo".

5.8 Finally, the complainants note that, in a document attached to their initial submission letter, the Office of the United Nations High Commissioner for Refugees regional office in Stockholm stated that it was not reasonable for a Chechen asylum seeker to seek refuge elsewhere in the Russian Federation. In this regard, they note that the State party has ignored this information in its observations in the present case.

5.9 In conclusion, the complainants maintain that the present communication and their claims are admissible, well-founded and reveal that their deportation to the Russian Federation would constitute a violation of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case the State party has recognized that the complainants have exhausted all available domestic remedies. The Committee finds no further obstacles to the admissibility; accordingly, it declares the communication admissible and proceeds with its examination on the merits.

[18] "PACE urges Russia to fight terrorism in the North Caucasus 'in line with human rights'", available at http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5701.

Consideration of the merits

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 In the present case, the issue before the Committee is whether the return of the complainants to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to their country of origin. In assessing this risk, the Committee must take into account all relevant considerations pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[19]

7.4 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",[20] the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.[21] While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.[22]

7.5 The complainants claim that in the Russian Federation they may be tortured, since there are substantial grounds to believe that the harassment and aggression they previously experienced in Chechnya will escalate further.

7.6 In this connection, the Committee notes that, even if it were to accept the claim that the complainants were subjected to ill-treatment and/or harassment in the past, the question is whether they remain, at present, at risk of torture if returned to the Russian Federation. The Committee notes that, at present, the human rights situation in the Russian Federation remains a matter of concern in several aspects, in particular in the northern Caucasus. It recalls that it expressed its concerns in its concluding observations in the context of the examination of the fifth periodic report of the Russian Federation in 2012, citing numerous,

[19] See, inter alia, communication No. 519/2012, *T.M. v. Republic of Korea*, decision adopted on 21 November 2014, para. 9.3.

[20] General comment No. 1, para. 6.

[21] Ibid., para. 5 and *A.R. v. The Netherlands*, para. 7.3.

[22] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including Chechnya, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings (see CAT/C/RUS/CO/5, para. 13). However, the Committee reiterates that the occurrence of human rights violations in his or her country of origin is not sufficient in itself for it to conclude that a complainant runs a personal risk of torture.[23]

7.7 The Committee further notes that the State party has drawn attention to inconsistencies and contradictions in the complainants' accounts and submissions that cast doubts regarding the complainants' general credibility and the veracity of their claims. In particular, the complainants have never sympathized with the resistance movement in Chechnya nor taken part in its activities. In this regard, the Committee takes note of the State party's submission that the complainants' sons/brothers were granted asylum in Sweden in 2002 and 2006, respectively, since at the time of their application there was an internal armed conflict in Chechnya, and not on grounds of an individual need for protection. The complainants have not alleged that their sons/brothers were active in the rebel movement, other than by occasionally providing food and medicine for rebels, before they left Chechnya. Consequently, there are reasons to question the alleged interest by the Chechen authorities in the remaining family and its continued harassment of them so many years later. In addition, according to the available country-of-origin information, a substantial part of the population in Chechnya has supported rebels at some point; however, the authorities are currently not interested in people who have done so only sporadically. Moreover, the Chechen authorities focus on persons who are suspected of having supported or collaborated with high-profile rebels and have given substantial support for a longer period of time.[24] In this regard, the Committee observes that the complainants' sons/brothers left the Russian Federation in 2002 and 2006 and that the complainants do not allege that the sons/brothers, since their departure, have been in contact with the rebels or that they have supported them whatsoever.

7.8 Further, the Committee also takes note of the State party's submission that the complainants' descriptions of the masked men who visited their apartment and threatened them were vague and of a general nature and that it is only an assumption on the complainants' part that the masked men had a connection to the authorities. In this connection, the Committee observes that no evidence had been brought forward to support the complainants' allegation that they had been ill-treated and threatened by the Chechen authorities. Moreover, the Committee notes that the complainants have not provided any medical documentation attesting that the first complainant was subjected to ill-treatment in November 2010. Further, as the Swedish migration authorities noted during the domestic proceedings, the complainants remained in their home despite the alleged threats. The third complainant did move to her uncle's home after the last visit by the masked men, but the complainants did not consider the threat to be so serious that she could not complete her studies at the local secondary school. In addition, the conduct of the complainants indicated that they considered that moving the third complainant to Grozny would be sufficient to eliminate the threats against her. Furthermore, the complainants submitted their internal passports to the Swedish authorities in order to support their identities. According to the stamps in the passports and the complainants' own account the passports were issued in 2009 and 2010 by the competent authorities in Grozny. In this connection, the Committee observes that the complainants were able to obtain these passports from the Chechen

[23] See, for example, *T.M. v. Republic of Korea*, para. 9.7.

[24] See the Swedish Migration Board's country profile of the Russian Federation, pp. 23–24.

authorities in 2009 and 2010, despite the fact that the alleged threats towards them began in 2008.

7.9 Finally, the Committee takes note of the State party's submission that the complainants alleged that they had been summoned for questioning in the Russian Federation and that two arrest warrants had been issued in their names; however, the complainants never explained who had sent those documents to Sweden or how that person had come into possession of them. In this connection, the Committee notes that, in addition, no explanation was provided to the Committee regarding the source of these documents.

7.10 The Committee observes that the complainants merely stated before the Migration Board and the Migration Court that they feared being subjected to further ill-treatment if returned to the Russian Federation, claiming that they had been harassed in the past, and that they would be targeted again. It notes, however, that the State party's authorities thoroughly evaluated the complainants' allegations and story, and found it to generally lack credibility.

7.11 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[25] In the light of the considerations above, and on the basis of all the information submitted by the complainants and the State party, including on the general situation of human rights in the Russian Federation, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their deportation to their country of origin would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. Accordingly, the Committee, acting under article 22 (7) of the Convention, concludes that the complainants' return to the Russian Federation would not constitute a breach of article 3 of the Convention by the State party.

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[25] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; *S.L. v. Sweden*, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.